

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-7222

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

ELIAS LESTER, M.D.,

Petitioner-Appellant,

vs.

EMLYN I. GRIFFITH, Regents Committee On Discipline,

Respondent-Appellee.

*On Appeal from the United States District Court for the Eastern
District of New York*

APPELLANT'S APPENDIX



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DOCKET ENTRIES

1a

ELIAS LESTER, M. D. vs. EMLYN I. GRIFFITH, etc.

DATE	NR.	PROCEEDINGS
2-18-74		PETITION OF ELIAS LESTER, M. D., FILED. (1)
2-19-75		BY BRAMWELL, J. ORDER TO SHOW CAUSE FILED why a judgment should not be entered in favor of the petitioner, etc. (returnable March 14, 1975 at 10:00 A.M.) - Order attached to petition above. (2)
2-21-75		Affidavit of Personal Service filed. (attached to above order) (3)
-3-75		Letter of John J. O'Grady, Assistant Atty., Gen., filed dated 2-28-75 addressed to Dr. Lester re adjournment of this matter from March 14, 1975 to March 21, 1975. (cc: Bartels, J.) (4)
3-24-75		AFFIDAVIT OF JOHN J. O'GRADY FILED in opposition. (5)
3-21-75		Before BARTELS, J. Case called. Plaintiff's motion is DENIED. Court orders action DISMISSED pursuant to Rule 12 h (2) and (3). CASE TO BE CLOSED. (6)
3-21-75		BY BARTELS, J.: ORDER OF DISMISSAL FILED, without costs and without prejudice. (7)
4-7-75		Minutes of the stenographer filed. (8)
4-7-75		Notice of Appeal filed (from order of March 21, 1975) (9)
4-7-75		Copy of instructions, etc., together with forms C and D were on this day handed personally to Dr. Lester, re preparation of record, etc. (10)
4-8-75		Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A. and to Louis J. Lefkowitz, Atty., Gen., Capitol, Albany, N.Y. 12224; to Louis J. Lefkowitz, Atty., Gen., State of N.Y., 261 Madison Ave., N.Y., 10016. <i>Amk</i>

750

246

207-1

75

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75

3

440

1

CLOSED**BARTUS**

PLAINTIFFS

LESTER, M. D. ELIAS
ELIAS LESTER, M.D.

DEFENDANTS

EMLYN I. GRIFFITH - RESPONDER
REGENTS COMMITTEE ON
DISCIPLINE
261 Madison Ave. (15th floor)
New York, N.Y. 10016

28 U.S.C. SEC. 1343 (3)

CAUSE

42 U.S.C. SEC. 1985 (3)

(Related Cases: 74-C-1051 and
75-C-58)

ATTORNEYS

ELIAS LESTER, M.D.
Pro Se
310 Keap Street
Brooklyn, N.Y. 11211

☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA
PAUPERIS

FILING FEES PAID

DATE

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS-5

JS-6

ORDER TO SHOW CAUSE WHY RESPONDENT SHOULD NOT BE
ENJOINED FROM REVOKING PETITIONER'S M.D. LICENSE
AND NOTICE (FILED FEBRUARY 19, 1975)

3a

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BROOKLYN, N.Y. 11201

PRESENT HONORABLE:

BARTELS, J.

INDEX NO:

75C 212

ELIAS LESTER, M.D. -----PETITIONER
310 KEAP ST. PRO SE
BROOKLYN, N.Y. 11211

VS.

EMLYN I. GRIFFITH -----RESPONDENT
REGENTS COMMITTEE ON DISCIPLINE
261 MADISON AVE. (15th. floor)
NEW YORK, N.Y. 10016

ORDER TO SHOW CAUSE

S I R S :

Upon the annexed Petition of Elias Lester, verified on the 18th. day of February, 1975, and the exhibits annexed thereto, let the Respondent show cause before the Federal District Court, for the Eastern District of N.Y. on the day of return of: MARCH 14 21, at 10:00 o'clock in the forenoon on that day, or as soon thereafter as Petitioner can be heard, why a Judgment should not be entered in favor of the Petitioner, for the relief demanded in the Petition, sufficient reasons appearing therefore, Let service a copy of this order to show cause together with a copy of the papers upon which it was granted on the Respondent, on or before MARCH 3, 1975 at 10:00 A.M.

HONORABLE:

S/

Henry BRANWELL

U.S. DISTRICT JUDGE.

2/19/75

4a
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, N.Y. 11201

PRESENT HONORABLE:

INDEX NO:

75C 247

ELIAS LESTER, M.D. ----PETITIONER
310 KEAP ST. PRO SE
BROOKLYN, N.Y. 11211

VS.

EMLYN I. GRIFFITH ----RESPONDENT
REGENTS COMMITTEE ON DISCIPLINE
261 MADISON AVE. (15th. floor)
NEW YORK, N.Y. 10016

NOTICE.

S I R S :

PLEASE TAKE NOTICE, that upon the annexed Petition of Elias Lester, verified on the 18th. day of February, 1975 and upon pleading and proceedings heretofore had, the undersigned affirms under the penalties of perjury the following:

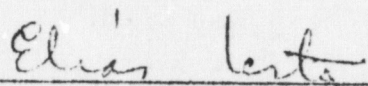
- 1.- That this action is brought under Title 28 U.S.C. § 1343(3) and 42 U.S.C. § 1985(3) and bases the Jurisdiction of the Court on such Titles.
- 2.- That the Court has Venue in this matter in that the Court is located in the District of the Petitioner.
- 3.- That Petitioner seeks in this action to enjoin Respondent in submitting any report in reference to Petitioner to the N.Y. Board of Regents with purpose and design to revoke Petitioner M.D. License, and that such report should be DISMISS, for the reason that Respondent being the chairman of a hearing on February 5, 1975 deny to subpoena a few witnesses not being public officials, which Honorable Justice John R. Bartels on a hearing

5a

before him on January 24, 1975 directed John J. O'Grady one of the Attorney's of Respondent that Petitioner Elias Lester be allowed to subpoena certain witnesses.

WHEREFORE, Petitioner prays that the releif sought herein, to enjoin Respondent in submitting any report to the Board of Regents be granted and such other and further relief as the Court may deem just and proper.

Dated: February 18, 1975



Elias Lester, M.D.
Petitioner Pro Se
310 Keap St.
Brooklyn, N.Y. 11211

PETITION IN SUPPORT OF MOTION TO ENJOIN RESPONDENT
FROM REVOKING PETITIONER'S M.D. LICENSE OR TO GRANT
THE SUBPOENA OF WITNESSES (FILED FEBRUARY 18, 1975)

6a

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BROOKLYN, N.Y. 11201

PRESENT HONORABLE: _____

INDEX NO: _____

ELIAS LESTER, M.D. -----PETITIONER
310 KEAP ST. PRO SE
BROOKLYN, N.Y. 11211

VS.

PETITION

EMLYN I. GRIFFITH -----RESPONDENT
REGENTS COMMITTEE ON DISCIPLINE
261 MADISON AVE. (15th. floor)
NEW YORK, N.Y. 10016

STATE OF NEW YORK)

COUNTY OF KINGS) ss. :

ELIAS LESTER, M.D. PETITIONER PRO SE,

being duly sworn, deposes and says:

- 1.- That Honorable Justice John R. Bartels, one of the Judges of the within Court did sign an order to show cause Index No: 75-C-58, on or about January 10, 1975.
- 2.-That the said Order to show cause was returnable on January 24, 1975.
- 3.- That the Attorney for the Respondent was present and so was Petitioner herein, that Petitioner allege herein that he was present before Honorable John R. Bartels, at the time^{the}/Judge directed to the Attorney of Respondent Mr. J. J. O'Grady that certain witnesses should be allowed to be subpoena by Petitioner herein.
- 4.- That Petitioner on January 30, 1975 did make a list of only 6 witnesses, none of them public officials to the knowledge

7a

of Petitioner, that the said paper was served on J.J. O'Grady by a processer on January 30, 1975.

5.- That Mr. J.J. O'Grady declined to subpoena any witnesses but informed Petitioner that the paper would be submitted to the Chairman of the Regents Committee on Discipline on the day of the hearing February 5th. 1975

6.- That a copy of the said papers with the affidavit of service was filed in the U.S. District Court for the Eastern District and is herein attached as EXHIBIT A. It was filed in a related case Index No: 74-C-1051 in the U.S. District Court. Note that there are only 6 persons to be subpoena.

7.- That Petitioner did attend the February 5th. 1975 hearing at 261 Madison Ave. (15th. floor) and made the petition to subpoena the only 6 witnesses to the Chairman, the Respondent herein, Mr. Emlyn I. Griffith, and the request was denied.

8.- That the said denial to subpoena a very reasonable amount of witnesses is a violation of Petitioner's Constitutional Rights it is also a violation of the New York Education Law, it is also a violation of the Law of the State of New York.

Note: The New York Education Law state:

§ 6510 d.

- (4) that the licensee shall have the right to produce witnesses and examine evidence ~~produced~~ in his behalf, to cross-examine witnesses and examine evidence produced against him, and to have subpoena issue in his behalf, to require the production of witnesses and evidence in manner and form as prescribed by the civil practice law and rules.

CPLR § 2302 state:

- Authority to issue (subpoenas)
(a) Without court order. Subpoenas may be issued without a court order by the clerk of the court, a judge where there is no clerk, the attorney general,-----

See EXHIBIT B.- A letter send to the Petitioner by the Office of the N.Y. Attorney General denying to subpoena any witnesses. Note that the word Board of Regents appear in such letter more than once, Note further that there is no hearing to be have before th Board of Regents, that the hearing was on February 5, 1975 before the Regents Committee on Discipline, of which Petitioner was informed by one of the Attorneys of the N.Y. State Education Department, the Office of the Attorney General that the hearing would be before only one of the Regents, the Respondent herein, and that the Respondent would submit a report to the Board of Regents, is against this report, to be submitted by the respondent that this Order to Show Cause is directed to, for was that one Regent, which denied to subpoena the Petitioner any witnesses, the Respondent herein.

8.- The single charge against Petitioner by the Office of the Attorney General is that Petitioner is practicing Medicine, while his ability to practice is impaired by mental disability, See EXHIBIT C-1 to C-5 5 letters in the form of certificates from 5 N.Y. License doctors, 4 of them M.D.'s one a Psychologist all of them certifying as of the soundness of mind of the Petitioner. (2 of them M.D. Psychiatrists)

It is the allegation of the Petitioner that the reason for the Attorney General to deny to subpoena witnesses is to cover up other matters known to the Attorney General, in order to defame and destroy the public image and credibility of the Petitioner, with the intent to influence, obstruct the outcome of a trial in the Nassau Supreme Court against the New York Lynbrook Mayor which Petitioner is sue-ing and who is covered for liability by the Hartford Insuracne Co. Subsidiary of ITT, the sue is for liable and slander vs. the Mayor who picked himself the Office

Of the Petitioner in 1971 in Lynbrook where Petitioner had an M.D. Office at the time and made defamatory statements against the Petitioner at the time. *No previous application for relief has been made vs. this Respondent.* 9a
WHEREFORE, Petitioner prays that the relief sought

herein, to enjoin Respondent in submitting any report to the Board of Regent with purpose and design to revoke Petitioner's M.D. License be granted or on the alternative to allow Petitioner to subpoena any and all witnesses which Petitioner had requested previously and which the Attorney General has power to grant be granted and such other and further relief as the Court may deem just and proper.

Dated: February 18, 1975

Elias Lester
Elias Lester, M.D.
Petitioner Pro Se.

State of New York)
 : ss. :
County of Kings)

I, Elias Lester, Petitioner Pro Se, being duly sworn deposes and says: That I am the Petitioner in the within proceedings, that I have read to foregoing order to show cause, Notice and Petition, and know the contents thereof; that the same is true to my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Sworn to before me

this February 18, 1975

Tillie Morkowitz

TILLIE MORKOWITZ
NOTARY PUBLIC, STATE OF NEW YORK
N.Y. 11227-6675
QUALIFIED IN QUEEN COUNTY
COMMISSION EXPIRES MARCH 24, 1975

Elias Lester
Elias Lester, Pro Se.
310 Keap St.
Brooklyn, N.Y. 11211

**AFFIDAVIT IN FURTHER SUPPORT OF MOTION WITH ATTACHED
EXHIBITS A, B, C-1, C-2, C-3, C-4, C-5 (FILED FEBRUARY 19, 1975)**

UNITED STATES DISTRICT COURT

10a

EASTERN DISTRICT OF NEW YORK

BROOKLYN, N.Y. 11201

PRESENT HONORABLE JUSTICE:

JOHN R. BARTELS

INDEX NO: 74-C-1051

IN THE MATTER OF THE APPLICATION OF :

WRIT OF HABEAS CORPUS

ELIAS LESTER, M.D.

310 KEAP ST.

BROOKLYN, N.Y. 11211 --- PETITIONER
PRO SE

AFFIDAVIT

VS.

JUDGE ELLEN J. MORPHONIOS, ET AL.

1351 NW 12 ST.

DADE COUNTY

MIAMI, FLORIDA----- RESPONDENT

I, Elias Lester, M.D. being duly sworn, deposes and says: That on today, January 30, 1975 I did prepare a letter which was delivered to a Mr. John J. O'Grady requesting to subpoena 6 witnesses, which to the knowledge of Petitioner were not public officials, and a request for allowing a Court Reporter, for a hearing before the Regents Committee on Discipline, to be held on February 5, 1975, at 10:00 A.M. at 261 Madison Ave, N.Y.

Elias Lester, M.D.

Elias Lester

Petitioner Pro Se, Elias Lester, being duly sworn deposes and says: That he has read the foregoing affidavit and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein to be alleged on information and belief, and as to those matters he believes them to be true:

Sworn to before me

this Jan. 30, 1975

Elias Lester, M.D.

310 Keap St.

Brooklyn, N.Y. 11211

EXHIBIT A

Index No. 74-C-1051

Elias Lester, M.D.

310 Keap St.
Brooklyn, N.Y. 11211

Plaintiff

against

Judge Ellen J. Morphonios, Et Al.

1351 NW 12 St.

Miami, Florida

Defendant

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF KINGS

ss.:

I, Joseph Silverman

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
197 Lee Ave. Brooklyn, N.Y. 11211

That on the 30 day of January 1975 at 12.15 P.M.

deponent served the annexed paper

upon

John J. O'Grady, which accepted the said paper.

the Deponent in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the one of the Attorneys for Resp. herein,

Sworn to before me, this 30th

day of

January 1975

Print name beneath signature

Joseph Silverman
JOSEPH SILVERMAN

Elias Lester, M.D.
310 Karp St.
Brooklyn, N.Y. 11211

12a

To: The Board of Regents
Regents Committee on Discipline
§ John J. O'Grady (Ass. Att. General)
261 Madison Ave.
N.Y. N.Y. 10016

S I R S :

PLEASE TAKE NOTICE, that I Elias Lester respectfully request as of right to have a Court Reporter, and subpoenas issued to the below named individuals, to attend the hearing on February 5, 1975 at 10:00 A.M. (15th floor) 261 Madison Ave, N.Y. and to allow to cross-examine the said witnesses by myself, as of right pursuant the New York Education Law. § 6510 (4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him ---

Note that CPLR § 2302 clearly states that the Attorney General has the authority to issue such subpoenas, in the past the hearing were before the Attorney General and subpoenas were not issued, despite of their request.

The persons to be subpoenas are my accusers, or the witnesses against me , to the best of my knowledge they hold no public positions, their names are:

- 1.-- Isidore Weiner, *Isidore Weiner*
- 2.-- Max L. Kamen, D.O. ←
- 3.-- Henry B. Marshall, M.D.
- 4.-- Herman B. Snow, M.D.
- 5.-- Philip F. Fleisher, D.O. ←
- 6.-- Thomas J. Sinatra, M.D.

The addresses of all are:

The State Education Department
261 Madison Ave.
N.Y. N.Y. 10016

Shown to before me

Given January 30, 1975

Elias Lester
Elias Lester, M.D.

EXHIBIT A



LOUIS L. LITVINSKY
ATTORNEY GENERAL

STATE OF NEW YORK
DEPARTMENT OF LAW

EDUCATION BUREAU
261 MADISON AVENUE
NEW YORK 16, N. Y.

TELEPHONE: MURRAY HILL 7-3830

FREDERICK NACK
ASSISTANT ATTORNEY GENERAL
IN CHARGE EDUCATION BUREAU

100-5650

January 24, 1974

Elias Lester, M.D.
185 Lee Avenue
Brooklyn, New York 11211

Dear Dr. Lester:

This will acknowledge receipt of your documents dated January 3, 1974, and January 14, 1974. You have asked for an order pursuant to CPLR for subpoenas and depositions of certain witnesses be made. Please be advised that we do not make such orders. Under the CPLR you may move in court for an order for subpoenas and depositions of certain witnesses.

Please be further advised that subpoenas by the New York Board of Regents are not effective outside the State of New York. Of the fifty-eight or more named individuals for whom you request subpoenas be issued, we are unable to issue same and decline to do so on the ground that our subpoenas are unenforceable outside the State of New York.

Please be further advised that among the people within the State of New York whom you wish to subpoena you have named several public officials. Please be advised that you need a court order to subpoena those individuals and therefore, the Board of Regents subpoenas will not be issued to you for that purpose.

Finally, as to the other individuals within the State of New York for whom you seek subpoenas, please be advised that at this time we will not issue subpoenas to those individuals. We have no objection, however, if at the hearing, to be held in this matter, you ask the Panel to issue such subpoenas to individuals within the State of New York who do not hold public positions. If you can satisfy the members of the Board that the testimony of those witnesses is relevant to the charges in issue, this office will not oppose the issuance of subpoenas at that time.

EXH: M

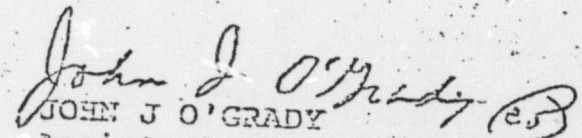
Elias Foster, M.D.

January 24, 1974

----- 2

I also note from your documents that you request this office to obtain copies of court transcripts from the County and other places. Please be advised that you, yourself, may directly contact the individuals who possess those transcripts and make arrangements directly with them to obtain copies.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General
BY
JOHN J O'GRADY
Assistant Attorney General

JJO'G:dd

E H. B.

15a

HENRY RUBANEK, M.D.
110-28 70 RD.
FORESTS HILLS, N.Y. 11375

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT I HAVE KNOWN ELIAS
LESTER, M.D. SINCE 1969 THAT HE IS A MAN OF GOOD CHARACTER AND
OF SOUND MIND.

DATED: JAN. 29, 1975.

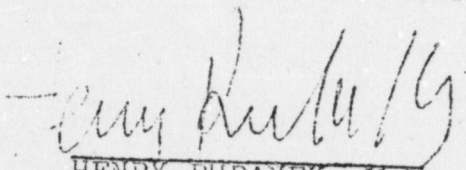

HENRY RUBANEK, M.D.

EXHIBIT C-1

16a

Dennis May, M.D., P.C.
140 West End Ave.
New York, N.Y. 10023

Jan. 29, 1975

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT I HAVE KNOWN DR. ELIAS
LESTER, M.D. SINCE 1969 THAT HE IS A MAN OF GOOD CHARACTER AND
OF SOUND MIND.

Dennis May
DENNIS MAY, MD.

EXHIBIT C-2

17a

OSCAR CHARDIET, M. D.
697 WEST END AVENUE
NEW YORK, N. Y. 10025
—
TELEPHONE: MONUMENT 2-0404

1-28-75

To whom it may concern,
Mr. Elias Siter, is in sound
mind well oriented and shows
no signs of psychiatric
disturbance.

Sincerely,
/ Oscar
Oscar CHARDIET.
PSYCHIATRIST

PHONE MO 2-0404
2-0406

Oscar Chardiet, M.D.

BY APPOINTMENT ONLY

697 WEST END AVENUE
NEW YORK, N. Y. 10025

EXHIBIT C-3

HECTOR R. WILTZ, M. D.

518 - 34TH STREET
UNION CITY, N. J. 0708
TEL. 201 - 868-5578

611 WEST 177TH STREET
NEW YORK, N. Y. 10033
TEL. 212 - 795-6300

1/28/75

To whom it may concern:

Today I did a mental evaluation of
Ellis Lester.

He is a 45 yr. old man who
looks average to his chronological age.

He is oriented and all intellectual
functions are within normal limits.
Neither delusions nor hallucinations
are elicited.

He is neither depressed nor elated.

SUMMARY: Mental examination free
of Psychiatric symptoms.

H. Wiltz
1-28/75
Psychiatrist

EXHIBIT C-4

19a

VITO F. GIANNINI
CONSULTING PSYCHOLOGIST
(CERTIFIED)
BROOKLYN MEDICAL CENTER
2502 - 86TH STREET
BROOKLYN, N. Y. 11214
PHONE 996-3161

1/30/75

To Whom It May Concern,
I have examined Elias Lester
on 1/30/75 and find him well oriented and
without signs of psychiatric disturbances.

Very truly yours,
Vito F. Giannini

EXHIBIT C-5

LETTER OF JOHN J. O'GRADY, ASSISTANT ATTORNEY GENERAL FILED, 20a
DATED FEBRUARY 28, 1975 ADDRESSED TO DR. LESTER ADJOURNING THE
CASE FROM MARCH 14, 1975 to MARCH 21, 1975 (FILED
MARCH 3, 1975)



LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

STATE OF NEW YORK
DEPARTMENT OF LAW
EDUCATION BUREAU
261 MADISON AVENUE
NEW YORK 16, N. Y.
TELEPHONE: MURRAY HILL 7-8880

FREDERICK NACK
ASSISTANT ATTORNEY GENERAL
IN CHARGE EDUCATION BUREAU

FILED
IN CLERK'S OFFICE
D. DISTRICT COURT E.D. N.Y.

MAR 3 - 1975

TIME A.M.
P.M.

February 28, 1975

Elias Lester, M.D.
310 Keap Street
Brooklyn, New York

Re: Lester -vs- Griffith
75C247

Dear Dr. Lester:

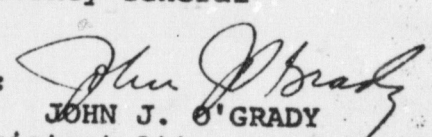
This will confirm our telephone conversation of today's date in which you agreed to an adjournment of the above entitled case from March 14th to March 21, 1975.

I have spoken to Mr. Reid in Judge Bartells' Chambers who advised that in view of our agreement, the case is adjourned to March 21st without any further action on our parts.

Thank you for your cooperation in this matter.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By: 
JOHN J. O'GRADY
Assistant Attorney General

cc: ✓ Hon. John R. Bartells

AFFIDAVIT IN OPPOSITION TO PETITIONER'S MOTION CONTAINING
NO EXHIBITS, SERVED LATE AND FILED SUBSEQUENT TO HEARING
(Filed MARCH 24, 1975)

21a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
US DIST CT ED, NY
* MAR 24, 1975 *

-----X
IN THE MATTER

of

ELIAS LESTER, M.D.,

Petitioner pro se

-against-

EMLYN I. GRIFFITH, Regents Committee
on Discipline,

Respondent.
-----X

AFFIDAVIT IN
OPPOSITION

Index No. 75C 247

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JOHN J. O'GRADY, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for the respondent herein, and make this affidavit in opposition to the relief sought by the petitioner herein.

2. I am familiar with the matter herein having heretofore been assigned to conduct a disciplinary proceeding against the petitioner herein pursuant to Education Law §6509 and §6510. By reason of this assignment I have in my possession the file of the Attorney General's office and the New York State Education Department relative to said disciplinary proceeding.

Annexed hereto and made a part hereof (and referred to as "The Appendix") is a complete copy of the transcript of said disciplinary hearing which took place on February 15 and July 26, 1974, as well as "Exhibits 1" through "13" and Exhibit "A" received in evidence therein.

3. Elias Lester, M.D., the petitioner herein, received license No. 89535 from the New York State Education Department on September 10, 1962, which authorized him to practice medicine in the State of New York.

4. On the 14th day of December, 1973, attempts were made to personally serve a Notice of Hearing, Petition and Charges upon the petitioner at 310 Keap Street, 195 Lee Avenue, and 361 Broadway, all Brooklyn, New York, at which addresses petitioner was registered to practice medicine in this State.

5. On December 20, 1973, the Notice of Hearing, Petition and Charges were served upon petitioner by registered mail, by mailing copies thereof to the three addresses above indicated by petitioner as places from which he was registered to practice medicine in this State.

6. The petition charged the petitioner herein with practicing the profession of medicine while his ability to practice was impaired by mental disability. A copy of the

charges are contained in the Appendix as "Exhibit 1".

7. Thereafter, on or about January 7, 1974, the Attorney General's office received a document containing 12 pages in the nature of an answer and request for subpoenas from Elias Lester. Said document is contained in the Appendix as "Exhibit 3A".

8. Thereafter, on January 21, 1974, the Attorney General's office received an additional document consisting of 4 pages which appears to be a continuation of the previous answer and request for subpoenas, which is contained in the Appendix as "Exhibit 5".

9. Thereafter, on January 24, 1974, your deponent directed a letter to the petitioner at his address at 195 Lee Avenue, Brooklyn, New York, declining to issue the subpoenas requested by the petitioner and advising him to appear before the Medical Grievance Committee and renew his request before that body. In the letter, your deponent informed petitioner that any request for subpoenas to an individual within the State of New York whose testimony was shown to be relevant to the issues of the disciplinary hearing, would not be opposed by this office. A copy of said letter is reproduced in the Appendix as "Exhibit 4".

10. On February 15, 1974, the date noticed for hearing in the disciplinary matter, a five member panel of the New York State Board for Medicine, Committee on Professional Conduct, convened to hear testimony concerning the charges against the petitioner. A stenographic transcription of the hearing is contained in the Appendix.

11. Petitioner did not appear in person or by counsel at said hearing, but instructed his brother, one Isaac Sslechter, and one Roger L. Amelunxen, an employee, to appear and read a telegram which he submitted to the Board. A copy of said telegram is contained in the Appendix as Exhibit "A". At the conclusion of the presentation before the hearing committee on that day, the committee adjourned the hearing for the purpose of allowing petitioner a sufficiently long period of time to make arrangements to appear in person and with counsel to represent his interests in this very serious matter.

12. Thereafter, sometime prior to June 5, 1974, the petitioner submitted to your deponent six copies of a "letter to Hon. Senator L. Weicker by Elias Lester, M.D. copyright Elias Lester 1974". A copy of said document is contained in the Appendix as "Exhibit 12".

13. At the request of the petitioner, the documents were distributed to the members of the State Board for Medicine.

14. During the month of May, 1974 and prior to June 5, 1974, a notice addressed to the committee accompanying the "copyrighted book" was received by your deponent and forwarded to the members of the Panel. A copy of said notice and attached papers, used by the Panel in their deliberation, is contained in the Appendix as "Exhibit 13".

15. Thereafter, on June 5, 1974, your deponent directed a letter to the petitioner advising him that the State Board for Medicine had scheduled July 26, 1974 as the next date for hearing in this matter and advised him to make every effort to obtain counsel and appear personally before the Board. A copy of said letter is contained in the Appendix as "Exhibit 7".

16. On July 26, 1974, the date scheduled for the continuation of the disciplinary hearing in this matter, petitioner did not appear but sent a telegram, a copy of which is contained in the Appendix as "Exhibit 6".

17. At the hearing Mr. Isaac Szlechter, petitioner's brother, and Joseph Silverman, an employee of the petitioner, neither being attorneys, appeared for the petitioner. In addition, one Edward Shulman, a stenographic reporter, hired by the petitioner, was allowed to remain and make a transcript of the hearing on behalf of petitioner, in addition to the State stenographer.

18. On July 26, 1974 the hearing was held and concluded. A copy of the transcript thereof is contained in the Appendix.

19. At said hearing, there was introduced in evidence a Judgment of Acquittal by reason of insanity, in the matter of The State of Florida v. Elias Lester in the Criminal Court of Records in and for Dade County, Florida, bearing case No. 71-9143; an Information in the same case, charging Elias Lester with the crime of Bribery; an Order in the same case appointing disinterested qualified experts to report on the mental condition of the defendant; and reports from the aforementioned experts setting forth their findings concerning petitioner's mental condition. Copies of each of those documents are contained in the Appendix as Exhibits 8, 9, 10, 11 respectively.

20. On or about December 13, 1974, the New York State Board for Medicine, Committee on Professional Conduct, issued its report of findings and recommendations to the Regents Subcommittee on Discipline, concluding that the petitioner herein is guilty as charged of practicing the profession of medicine while his ability to practice was impaired by mental disability. The Panel recommended to the Board of Regents that the petitioner's license and registration be revoked. A copy

of said Report of Findings and Recommendations as well as the Certificate of Executive Secretary and Professional Conduct Officer, dated December 20, 1974, certifying the record to the Board of Regents is annexed hereto, made a part hereof and marked "Exhibit I".

21. Thereafter, by letter dated January 3, 1975, the New York State Education Department advised the petitioner herein of the findings and recommendation of the New York State Board for Medicine and advised petitioner that the Committee on Discipline of the New York State Board of Regents would meet on February 5, 1975 to review the said findings and recommendations. A copy of said letter is annexed hereto, made a part hereof and marked "Exhibit II".

22. On January 30, 1975, the petitioner, through his agent, one Joseph Silverman, served upon your deponent a notice requesting subpoenas to be issued to each of the five members of the Medical Grievance Panel and Isidore Weiner, the Investigator who signed the charges in this matter. A copy of said notice is annexed hereto and made a part hereof and marked "Exhibit III".

23. On February 5, 1975, the petitioner appeared in person before the Regents Committee on Discipline and submitted a group of documents, which is annexed hereto, made a part hereof and marked "Exhibit IV".

24. On that date, petitioner was allowed to make an oral statement before said Subcommittee, which your deponent believes was transcribed by a hearing reporter retained by petitioner.

25. On or about March 10, 1975, the said Regents Committee on Discipline issued a report to the New York State Board of Regents. A copy of said report is annexed hereto, made a part hereof and marked "Exhibit V".

26. Upon information and belief, the New York State Board of Regents is meeting March 21, 1975 to pass upon this matter.

27. All of the procedures followed above are clearly set forth in the New York Education Law §6509 and §6510 and were followed completely.

28. If petitioner still feels aggrieved after the action of the Full Board of Regents, under the Education Law he may move directly in the Appellate Division, Third Department, to review, in an Article 78 proceeding, the entire record of the proceedings before the New York State Board for Medicine and the Regents.

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WHEREFORE, your deponent prays that since petitioner has not been aggrieved and does not present a Federal question, the application presently pending before this Court should be denied in all respects.

/s/ JOHN J. O'GRADY
JOHN J. O'GRADY
Assistant Attorney General
of the State of New York

Sworn to before me this
20th day of March, 1975

/s/ MILTON H. ADLER
Assistant Attorney General
of the State of New York

TRANSCRIPT OF THE MARCH 21, 1975 HEARING ON THE MOTION
TO ENJOIN RESPONDENT FROM REVOKING PETITIONER'S M.D.
LICENSE OR TO GRANT THE SUBPOENA OF WITNESSES

30a

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----X

LESTER, :

Plaintiff, :

-versus- :

75-C-247

GRIFFIN, :

Defendant. :

-----X

United States Courthouse
Brooklyn, New York

March 21, 1975
10:00 o'clock a.m.

Before :

HONORABLE JOHN R. BARTELS, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is
a true and accurate transcript of my
stenographic notes in this proceeding.

Michael Picozzi
Official Court Reporter
U. S. District Court

Appearances:

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IRVING BOYD GREEN, ESQ.
Attorney for the Plaintiff

JOHN J. O'GRADY, ESQ.,
Attorney for the Defendant

- - - -

MP:jm
Reel#1

1 THE CLERK: Civil motion, Lester against
2 Griffin.

3 MR. GREEN: Your Honor, I haven't appeared
4 here, but I am appearing here at the request of
5 Dr. Lester.

6 THE COURT: I will hear you.

7 MR. GREEN: I am not asking for an adjournment
8 now, despite having been shorted considerably upon
9 service of opposing papers which I understand the
10 doctor received yesterday about 11:30. That's
11 yesterday, March 20th. I saw them for the first time
12 nine o'clock today.

13 In addition to being short-serviced, the papers
14 themselves are devoid of the exhibits they claim are
15 already attached.

16 THE COURT: Where are the papers?

17 THE CLERK: We have not received them, your
18 Honor.

19 MR. O'GRADY: I have them with me, your Honor.

20 THE COURT: How can I determine a motion today
21 if I have not received the papers?

22 MR. O'GRADY: Your Honor --

23 THE COURT: You put me and I in an embarrassing
24 situation.

25 MR. O'GRADY: Your Honor, this is a peculiar

1 situation.

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2 THE COURT: Are you from out of town?

3 MR. GREEN: I'm from Yonkers.

4 THE COURT: Are you in Yonkers now?

5 MR. GREEN: Yes.

6 THE COURT: Let me state this, I don't carry
7 these things back with me, I usually decide them off
8 the bench.

9 MR. GREEN: This is what we are looking for,
10 your Honor.

11 THE COURT: I don't have the papers, so there's
12 no use referring to the papers.

13 MR. GREEN: Even so, if you had them, your
14 Honor, he claims that there are exhibits attached
15 which we know nothing about. This is going on since
16 February 19th when the order to show cause was served
17 upon him, February 20th. There was an adjournment at
18 his request. And I believe your Honor's Court rules
19 are that papers are to be filed no later than the
20 Tuesday preceeding the Friday of the motion.

21 The part I object to is that. The exhibits are
22 missing from the opposing papers that he claims are
23 attached.

24 THE COURT: Let's forget about that for a
25 second and try to go to the heart of this matter.

1 MR. GREEN: Thank you.

2 THE COURT: What is claimed here is a violation
3 of Dr. Lester's civil rights. He said, as I under-
4 stand his claim, that certain State officials are
5 about to make a report to the Board of Regents for
6 final action concerning his revocation of a license
7 to practice medicine.

8 Now, he wants action.

9 MR. GREEN: He learned today from the paper I
10 have before me that on or about March 10, 1975, the
11 said Regents Committee on Discipline issued a report
12 to the New York State Board of Regents -- a copy of
13 the report is annexed marked Exhibit 5, and we have
14 no such information.

15 THE COURT: You made that clear.

16 Now, what about it?

17 MR. O'GRADY: Your Honor, let me start from
18 the beginning.

19 THE COURT: Before you start from the
20 beginning, let me know why you haven't gotten these
21 exhibits attached to your papers?

22 MR. O'GRADY: Your Honor, I have the original
23 papers here for your Honor.

24 THE COURT: How can he answer if he doesn't
25 have the exhibits?

1 MR. O'GRADY: I didn't know we had an
2 attorney in the case.

3 MR. GREEN: What difference does that make?
4 He's entitled to the --

5 THE COURT: Wait a minute. You're in the
6 Federal Court. You don't do that.

7 MR. GREEN: I apologize. I am sorry.

8 THE COURT: It makes no difference whether he
9 has an attorney or not, he has a right to look at
10 them personally. You read the rules of this Court
11 and of any Court, for that matter.

12 MR. O'GRADY: First of all, this is the third
13 time I have been before your Honor on this type of
14 paper (indicating).

15 THE COURT: I agree, but I want to be sure he
16 has every opportunity to be heard. You have a serious
17 situation here where this gentleman is claiming a
18 violation of his civil rights.

19 Actually, there hasn't been any final action
20 whereby he has become hurt yet. Only after he has
21 been deprived of his license can there be a claim.
22 There is a question of due process involved, as well
23 as deprivation of his civil rights. I suppose it would
24 involve the Fourth and Fourteenth Amendments. He had
25 his opportunity before the State Board to make his

1 claim. He can't enjoin the State Board before they
2 take this final action.

3 MR. O'GRADY: As I indicated, this is, as you
4 know, the second time on the third petition I have
5 been before this Court on which are impossible to
6 answer because they are completely devoid of any
7 sense. Hopefully, if we have an attorney here, we
8 can get proper papers to answer.

9 For the benefit of the Court, and hopefully
10 for counsel, I have prepared an affidavit setting
11 forth the factual background here in chronological
12 order. It's not directed as an answer to this
13 petition which is unanswerable, in my opinion.

14 MR. GREEN: I object to the words, "factual
15 background".

16 THE COURT: Don't object to anything, there is
17 no jury here.

18 MR. O'GRADY: I would like to, if the Court
19 would allow me, to present to you an affidavit I have
20 prepared of what has gone on in the case since
21 December 1973, setting forth in chronological order,
22 because it does not appear in any of the papers
23 before the Court, what has happened so far.

24 In addition, I would like to submit to the
25 Court papers which I have annexed to my affidavit

1 which consist of the record of the transcript of
2 the hearings made before the Medical Grievance
3 Committee with copies of all the papers submitted
4 before that body, all of which the petitioner here
5 has.

6 I submit this only for the purpose of having
7 before the Court finally a chronological, and I hope
8 logical, sequence of what has gone on here, which is
9 a big problem here as this Court knows.

10 You cannot make heads or tails of the petitions
11 that the petitioner has been making for himself.

12 THE COURT: If I understand the situation, the
13 petitioner has been charged with certain irregulari-
14 ties and there was a committee that made a report.

15 MR. GREEN: There was a hearing, then I learned
16 today that a report was made on March 10th. This is
17 during the pendency of the signing of the order to
18 show cause -- the joining of the motion.

19 THE COURT: We didn't enjoin any action on the
20 part of the Board. Do you practice in the Federal
21 Court?

22 MR. GREEN: Yes.

23 THE COURT: You know our limitations. We can't
24 jump in and stop State proceedings. There were
25 provisions for a hearing here and he had a right to

1 bring in his witnesses and I understand he didn't do
2 so.

3 Is that right?

4 MR. O'GRADY: Yes, your Honor. Would your
5 Honor care to see the affidavit of the facts?

6 THE COURT: Not at this point. You've got to
7 understand the basis for any jurisdictional action on
8 the part of this Court. We don't jump in and stop
9 all State proceedings. I don't know that his license
10 is going to be revoked.

11 MR. GREEN: We don't know.

12 THE COURT: Has it been revoked?

13 MR. O'GRADY: Not yet. I have papers --

14 THE COURT: Why doesn't he appear before the
15 Board and make his argument?

16 MR. GREEN: He did and wasn't given a chance
17 to be confronted by the witnesses and cross-examine
18 them. We have a copy of a transcript (indicating).

19 MR. O'GRADY: We are getting more misinforma-
20 tion.

21 THE COURT: Have you studied the record?

22 MR. GREEN: I saw it.

23 THE COURT: I hope you understand the facts.

24 MR. GREEN: I do.

25 THE COURT: Because if you don't, you are

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1 wasting a lot of time.

2 MR. GREEN: I am not out to waste the Court's
3 time.

4 Doctor Lester had a reporter present of his
5 own at the hearing on February 5th and he requested
6 of the Regents Committee, which consists of a
7 practicing attorney with two others, with the request, --

8 MR. O'GRADY: At this point, maybe I should
9 give a presentation of the entire background. I
10 believe it would be also for the benefit of counsel.

11 This matter --

12 MR. GREEN: May I finish this point?

13 MR. O'GRADY: I will let you finish.

14 THE COURT: Everyone relax. I will let you
15 begin all over.

16 MR. O'GRADY: Your Honor, back in December of
17 1973, Doctor Lester was served with papers charging
18 him with practicing medicine while his ability to
19 practice was in question. The allegation was he was
20 mentally incompetent.

21 MR. GREEN: He was out of the country at that
22 time.

23 MR. O'GRADY: Just a minute, please.

24 THE COURT: Give him a chance.

25 MR. O'GRADY: I happen to have been burdened

1 with the duty of presenting this case to the
2 Grievance Committee. I sent the process server out
3 to three addresses which Dr. Lester is registered
4 to practice medicine in in New York and we found he
5 was not in the country.

6 Pursuant to the Education Law, we served him
7 by mail at the three residences listed.

8 THE COURT: One is in Brooklyn?

9 MR. O'GRADY: Right. The three are in Brooklyn.

10 Shortly thereafter, in early January of 1974,
11 I received an answer from Dr. Lester from someplace
12 in Israel indicating to me that he had received a
13 copy of the charges and that he was answering the
14 charges.

15 In addition to the answer, he asked that I
16 issue subpoenas for approximately fifty people, most
17 of whom lived in Florida.

18 THE COURT: You presented that matter the last
19 time you were here.

20 MR. O'GRADY: Yes.

21 THE COURT: I said, let him subpoena a lesser
22 amount.

23 MR. O'GRADY: Let me continue. This was in
24 January of 1974, a year ago. I sent a letter back to
25 Dr. Lester indicating that I would not, on behalf of

1 the Medical Grievance Committee, issue such
2 subpoenas. Ordinarily in these types of cases, an
3 attorney may be issuing subpoenas for an individual --

4 THE COURT: Yes, but fifty is obviously an
5 abuse.

6 MR. O'GRADY: In the letter which I sent to
7 Dr. Lester, I informed him that I wouldn't issue any
8 subpoenas for him and that he should come before the
9 Medical Grievance Committee and ask them for the
10 subpoenas personally.

11 I would not object to the issuance of any
12 subpoenas to any witnesses for whom Dr. Lester could
13 show some relevance to the issues before the Medical
14 Grievance Committee.

15 The date for hearing was set for February 4 or
16 February 5, 1974. At that time, Dr. Lester did not
17 appear. That was the time to come in and produce
18 witnesses in evidence. He did not appear but sent
19 in his brother and employee to read a telegram saying
20 he was in Israel. I have a copy of it here (indica-
21 ting).

22 Previously, that hearing was adjourned from
23 that date until June or July, 1974 at the request of
24 Dr. Lester and at my request so he could be here to
25 present his case before the Committee. That was the

1 understanding. The case was adjourned.

2 Sometime in June of 1974, we received a
3 voluminous sheaf of documents in the form of a
4 copyrighted book or letter to Senator Weicker, copy-
5 righted and written by Dr. Lester, which was presented
6 to the Board on July 6th, and Dr. Lester was not
7 present. He sent a telegram and his brother --

8 THE COURT: This can't continue at all.

9 MR. O'GRADY: It didn't, because at that point
10 the Committee went ahead with the hearing. Time had
11 been given for the respondent to appear.

12 The State law only gives an opportunity to
13 appear, it does not mandate an appearance.

14 At that time, there was put into evidence before
15 the Committee a certificate of acquittal of the
16 crime of bribery by reason of insanity; there was
17 put into evidence an order of the Criminal Court in
18 Dade County, appointing a two-man medical Appellate
19 Division, to examine into the competency of
20 Dr. Lester to stand trial in this criminal case; and
21 put into evidence was the report of those individuals
22 indicating that Dr. Lester at that time was suffering
23 from such mental defects that he wasn't able to
24 understand the charges against him and on that basis
25 the criminal charges were dismissed for that reason.

1 Those documents were placed in evidence. In
2 addition, there was placed in evidence all of the
3 documents submitted by Dr. Lester.

4 Now, on that day his brother and employee
5 appeared and asked for time to submit a group of
6 documents and long-playing phonograph records which
7 were en route from Israel which would be in the
8 nature of further evidence to be submitted by
9 Dr. Lester.

10 The hearing held up its judgment and allowed
11 those documents to be received. On the basis of all
12 those documents, the Committee made a finding that
13 Dr. Lester was indeed mentally incompetent and not
14 fit to practice medicine.

15 That finding was issued in the form of a report
16 sent along to the New York State Board of Regents
17 Committee on Discipline.

18 THE COURT: When was that report?

19 MR. O'GRADY: A copy of that report and notice
20 was sent to Dr. Lester by a letter dated
21 January 3rd, 1975. And a hearing before the Regents
22 Committee on Discipline was schedule for February 5th,
23 1975, which is the hearing that counsel is talking
24 about now.

25 At that hearing, which is in the nature of

1 almost an appellate type argument, the Regents
2 Committee had before it the transcript of the hearings
3 which were held previous to that containing the
4 recommendations of the Medical Grievance Committee.
5 And then, under the New York State law, the Regents --
6 the hearing panel merely makes the report and
7 recommendation to the Regents Committee and the
8 Regents Committee then, based upon the entire tran-
9 script, decides for themselves what the results
10 should be.

11 THE COURT: They have not taken any action as
12 yet?

13 MR. O'GRADY: That Committee has prepared a
14 document which is, to the best of my information,
15 submitted to the Board of Regents right now.

16 THE COURT: The Board of Regents have not made
17 up their minds?

18 MR. O'GRADY: They will make a final
19 determination as to what to do with Dr. Lester's
20 license some time this week or early next week when
21 the report of the Sub-Committee on Discipline, of
22 which the chairman is Mr. Griffin, the respondent
23 herein -- that is the reason Griffin is the respondent
24 herein, I guess. This gentleman has brought this
25 procedure to enjoin Mr. Griffin from making his

1 report to the Board of Regents.

2 THE COURT: Wasn't this issue before me before?

3 MR. GREEN: Yes, I believe so.

4 MR. O'GRADY: The question was addressed to me.

5 This specific issue was not. The last two
6 proceedings were brought before this Court shortly
7 before the matter was scheduled to be held and heard
8 by the Regents Committee on Discipline.

9 THE COURT: That's when I said you ought to
10 give him an opportunity to subpoena --

11 MR. O'GRADY: At that time, it was brought
12 before the chairman of the Committee and acting
13 director of professional conduct, who at that time
14 certified the transcript below to the Regents.

15 At that time, there was conversation concerning
16 subpoenas and you asked me to step out into the hall
17 and talk to Dr. Lester and explain to him about
18 subpoenas.

19 THE COURT: No, to agree upon a number, I think.

20 MR. O'GRADY: I did that and I went into the
21 hall and then I told Dr. Lester at this point there
22 was no need for subpoenas --

23 THE COURT: Because there wasn't any further
24 hearing, but you did have a hearing since that time.

25 MR. O'GRADY: There was a hearing in the nature

1 of an appellate type review.

2 THE COURT: Not with witnesses?

3 MR. O'GRADY: No, there was a hearing. The
4 Regents reviewed the transcript of the prior hearings.

5 THE COURT: I see.
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9 (continued on next page)
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2 THE COURT: I understood when you were before me
3 there was still an opportunity for an evidentiary
4 hearing; otherwise, we wouldn't be talking about
5 subpoenas. Why then would you say I can't give him
6 fifty but it's reasonable we will give him six?

7 Under those circumstances, you led me believe
8 there was still a possibility to have a hearing.
9 Didn't you?

10 MR. O'GRADY: Well, I certainly had no intention
11 of doing that.

12 THE COURT: Why talk about subpoenas at that
13 late date?

14 MR. O'GRADY: At that time I was trying to
15 inform the Court and this gentleman that there was no
16 evidentiary hearing. There was no need for a subpoena.
17 He kept on insisting and the Court asked me to step
18 outside and inform him about subpoenas.

19 THE COURT: I could have told him about
20 subpoenas inside.

21 MR. O'GRADY: I had a discussion and thereafter
22 I received a document requesting the issuance of six
23 subpoenas.

24 The subpoenas were to go to the five members of
25 the Medical Grievance Committee and the investigator who

signed the charge. 48a

18

1 THE COURT: What is your name again?

2 MR. GREEN: Irvin Boyd Green.

3 THE COURT: Mr. Green, this proceeding is
4 bizarre. There is no question about that.

5 MR. GREEN: The proceeding that took place when
6 he appeared at the hearing --

7 THE COURT: No. Dr. Lester's application and
8 conduct is bizarre to say the least.

9 MR. GREEN: May I interject?

10 MR. O'GRADY: May I just conclude?

11 THE COURT: They are bizarre and I will listen
12 to them. I've gotten applications from Israel pointing
13 out that there were proceedings in the state. They are
14 regular proceedings everyone else has to submit to.

15 MR. GREEN: They were not evidentiary
16 proceedings.

17 THE COURT: He says they were.

18 MR. O'GRADY: They weren't because he never
19 showed up. They were held in absentia.

20 THE COURT: You had an opportunity to come.

21 MR. GREEN: There was no witness present even
22 at the hearing.

23 THE COURT: How do you know?

24 MR. GREEN: This is what I am advised.

25 Is that so?

1 THE COURT. Is that so?

2 MR. O'GRADY: At the evidentiary hearing, I
3 presented no live witnesses.

4 THE COURT. The only requirement of the 14th is
5 that you have notice and an opportunity to be heard.
6 You don't take advantage of the opportunity to be
7 heard you are not deprived of your constitutional
8 rights and that is the whole issue.

9 MR. GREEN: We were deprived in this respect,
10 the committee acted upon a letter signed by an
11 osteopath, a man by the name of Kaman who typed in the
12 names to the Regents Committee -- on which were typed
13 the names of four other persons, one of them another
14 osteopath who no doubt claimed that the man was not
15 mentally competent or words to that effect. On the
16 basis of a letter signed by the osteopath, this is the
17 only evidence submitted to the Regents Committee, one
18 of them being an attorney in addition to an
19 investigatory report by a man whose name for the
20 moment I don't recall who was sent down to Florida at
21 somebody's request and the full story is not disclosed
22 because the man was not guilty, the man was found not
23 guilty. He should have been allowed to be confronted
24 by the witnesses who claimed there was something the
25 matter with the doctor's mind. I have spoken with the

1 doctor and I find nothing wrong with the doctor's mind.

2 THE COURT: You are not an expert.

3 MR. GREEN: Of course.

4 MR. O'GRADY: Can I correct something?

5 THE COURT: Let him finish.

6 MR. GREEN: Some five letters from doctors, two
7 of them are psychiatrists and one a psychologist, were
8 supplied by Dr. Lester. He submitted it both to the
9 court and the committee.

10 THE COURT: You have to follow the procedure
11 like everybody else. You can't fail to show up and
12 set forth your own procedures and do what you want.
13 This is a hearing and you should appear at it. He
14 gave them another adjournment for a second time and
15 then he didn't appear.

16 Now, how long are we going to keep up this
17 charade and then when evidence is put in before the
18 committee he now comes up and objects to the evidence.
19 We can't conduct a hearing like that. We would never
20 be able to have a legal proceeding under those
21 circumstances.

22 MR. GREEN: He has requested of the committee --

23 THE COURT: He doesn't have to have everyone of
24 his requests granted, does he?

25 MR. GREEN: Your Honor, you did state a few

1 moments ago -- this is what I am learning about the
2 case -- you had stated prior to this in a previous
3 hearing that he should agree on the amount of
4 subpoenas and six was agreed upon. If the man himself
5 who is a very educated man has no knowledge of how to
6 go about serving subpoenas, I think it is a gross
7 injustice to be deprived of his rights because of that.
8 He is an American citizen.

9 THE COURT: That is not necessarily true. If
10 he had notice of the other hearing and didn't show up --
11 but the point is he came here and I got the impression
12 that there is still a hearing to be held. And he had
13 asked for fifty subpoenas, which request I denied, and
14 I suggested we have six. And you agreed. I thought
15 you agreed that six would be permissible. The actual
16 fact was the hearing was already over and no
17 subpoenas were available because there is no further
18 evidence to be produced.

19 Is that true?

20 MR. O'GRADY: That is true.

21 THE COURT: That I was misled by you.

22 MR. O'GRADY: Perhaps, but it wasn't my
23 intention to mislead the Court. Perhaps I wasn't as
24 forceful --

25 THE COURT: Forceful or not, the result was the

1 same.

52a

2 I would like to get the matter over with. As
3 far as I am concerned, Mr. Green, I am not going to
4 be here to take all this time with Dr. Lester. He has
5 a right to a hearing. I think he probably was given
6 that right and he didn't show.

7 Now, why can't you have a hearing?

8 MR. O'GRADY: Let me say this --

9 THE COURT: And get it over with.

10 MR. O'GRADY: The state procedures are in
11 process. Hopefully we now have counsel in the
12 picture --

13 MR. GREEN: No.

14 THE COURT: No, he says no.

15 MR. O'GRADY: I don't know why he is here then.

16 MR. GREEN: It's not for you to inquire.

17 THE COURT: Is that the way to answer?

18 MR. GREEN: There is a certain amount of abuse
19 counsel is required to take.

20 THE COURT: You didn't take any abuse yet.
21 This is nonsense. We are trying to accomplish
22 something. Why can't something be done? Let him make
23 his statement and bring in two or three witnesses and
24 find out what he is talking about.

25 And if he hasn't had a hearing it is his own

1 fault. We can't have one man run the whole show.

2 MR. O'GRADY: The committee has made a
3 recommendation which is going to the Regent. The
4 recommendation has been a revocation of his license.
5 They recommended to the full board. I assume they
6 probably will rather than revoke the license they will
7 suspend with leave to apply to the Regents Committee
8 for determination of said suspension. That is upon
9 submitting to the Regents reports from two independent
10 psychiatrists approved by the department. If they say
11 he is not mentally incompetent then --

12 THE COURT: This is reviewable by the Appellate
13 Division?

14 MR. O'GRADY: Yes. This is the proper procedure
15 as your Honor knows. Direct appeal in the nature of
16 an Article 78 proceeding.

17 THE COURT: That's right. And he has come
18 running into the Federal Court without giving the
19 state courts the opportunity to perform their legal
20 function.

21 MR. GREEN: Perhaps Dr. Lester exercised his
22 own judgment and I believe his judgment was quite
23 proper seeking the assistance of the Federal Court.

24 THE COURT: At the proper time. You can't
25 rush in and seek the assistance every time you think

1 something is wrong. There are rules with respect to
2 jurisdiction. I don't have all that jurisdiction.

3 MR. GREEN: You have the jurisdiction where a
4 man is deprived of his personal rights.

5 THE COURT: But I see no evidentiary hearing --

6 MR. GREEN: There was no evidentiary hearing.

7 THE COURT: That doesn't prove he has been
8 deprived of his rights. I have gone over this.
9 According to all the affidavits I have he had an
10 opportunity twice to have the hearing and he didn't do
11 it. He hasn't been deprived of anything yet and there-
12 fore he can't come in here. You have to follow the
13 state procedure. It seems to me you have to exhaust
14 those remedies first.

15 MR. GREEN: Some cases hold the remedies have to
16 be exhausted and some say they do not. It has been
17 your Honor's statement that he was assured he would be
18 allowed to question the six witnesses and he was
19 denied that right.

20 THE COURT: Wait a minute.

21 MR. GREEN: He was denied that right at the
22 hearing he attended on February 5th and it's in the
23 transcript.

24 THE COURT: That was on a misrepresentation that
25 there was still a hearing to be held. If there wasn't

1 any hearing to be held and he had already waived the
2 right --

3 MR. GREEN: There was a hearing. This is the
4 transcript of the hearing of February 5th (indicating).

5 MR. O'GRADY: There are hearings and there are
6 hearings. As I indicated, the hearing --

7 THE COURT: He might have been deprived of
8 subpoenaing people at that hearing which had already
9 been held at the time that case was argued before me,
10 but I did not know it. He might have already been
11 deprived of that. But that will be reviewed first by
12 the State.

13 MR. GREEN: I don't think that Dr. Lester knows
14 what is happening.

15 THE COURT: He knows what is going on.

16 MR. O'GRADY: As I indicated before, you have
17 been using the words "I misrepresented to you certain
18 things," and I would like to clear the record. I
19 don't believe I did. I have been trying to get across
20 that the hearing before the Regent Committee on
21 discipline is not an evidentiary hearing but a hearing
22 in the nature of an appellate-type review which
23 reviewed the records of what happened before.

24 THE COURT: What was the record before?

25 MR. O'GRADY: Two previous hearings both in '74

1 which Dr. Lester was given an opportunity to appear
2 at and an adjournment of seven months was given and he
3 did not appear again.

4 THE COURT: Before whom?

5 MR. O'GRADY: The Medical Grievance Committee.

6 THE COURT: I can't do anything about that.
7 That was long past. And the so-called letter of a
8 so-called osteopath that counsel referred to was a
9 report after the full hearing of five members, a five
10 member panel.

11 MR. O'GRADY: There is no distinction in the
12 State of New York between an M.D. or a D.O. --

13 THE COURT: What is a D.O.?

14 MR. O'GRADY: A Doctor of Osteopathy. They get
15 the same license. A Doctor of Osteopathy and a
16 Doctor of Medicine get the same license. The five
17 members of the panel, one of which was a psychiatrist,
18 one a urologist, all duly appointed by the Regents to
19 hear the cases. They made a report. Dr. Kaman
20 happens to be the Chairman and signed the report for
21 the committee. That was represented to your Honor as
22 a letter by an osteopath. I submit that was the
23 report of the full medical panel who heard the case.

24 I think your Honor has pinpointed the actual
25 point here that this -- first of all, this procedure

1 is not brought on proper papers. There was no proper
2 showing of any violation of federal rights and secondly
3 there is a state remedy which is fully available of
4 which the procedures are still in the process of
5 carrying on. If the recommendation is followed this
6 gentleman will not be deprived of his license to
7 practice but in effect will be allowed to come before
8 the Regents with testimony from approved psychiatrists
9 that can be agreed upon by Petitioner here and the
10 State Education Department.

11 THE COURT: As I understand it, the six
12 requested witnesses requested by Dr. Lester were
13 really Dr. Lester's accusers.

14 MR. O'GRADY: Not his accusers, his judges.

15 THE COURT: What can he prove by them?

16 MR. GREEN: Two men are D.O.'s -- what can they
17 conclude of a man's stability or lack of stability?

18 THE COURT: You see, Mr. Green --

19 MR. GREEN: A lot of facts were stated by
20 Mr. O'Grady and reference was made to January 24, a
21 January 24th letter advising the doctor to appear
22 before the Medical Grievance Committee. I have a copy
23 of a January 24th letter and there is no mention of it
24 in there.

25 THE COURT: All of you are forgetting the real

1 issue here, that is the jurisdiction of this Court.
2 The proceedings in professional misconduct are set forth
3 in Section 6510 of the New York Education Law. In
4 brief they provide a hearing by a hearing panel of
5 five or more members appointed by the Chairman of the
6 Committee on Professional Conduct for the particular
7 profession after the Attorney General has filed charges
8 of misconduct. And the panel is required to
9 determine the guilt or innocence of the party involved
10 and submit a recommendation --

11 MR. GREEN: Your Honor --

12 THE COURT: And then this determination is
13 reviewed by the Regents Review Committee which in turn
14 makes its recommendation to the Board of Regents.
15 The Board makes a decision and issues an order. The
16 entire proceedings are reviewable by the Appellate
17 Division of the Third Department. That is under
18 Section 6510 --

19 MR. GREEN: Your Honor, he is misquoting that
20 law when he states the licensee shall have the right
21 to produce witnesses and examine evidence and cross-
22 examine it and have subpoenas issued in his behalf to
23 require the production of evidence and witnesses.

24 THE COURT: That is at the panel hearing.

25 MR. GREEN: He was denied this right.

1 MR. O'GRADY: He didn't show up. How can he
2 exercise his right if he doesn't show up?

3 THE COURT: You let the state court decide that.
4 You have here, after the hearing before the panel --
5 after the hearing before the Regents review --

6 MR. O'GRADY: The last time he was before the
7 Regent Review Committee.

8 THE COURT: Is that when he wanted subpoenas?

9 MR. O'GRADY: Yes. That's what I tried to
10 explain.

11 THE COURT: It doesn't provide for issuance of
12 subpoenas there.

13 I think I am going to dismiss this application.

14 MR. GREEN: May I ask your Honor a question
15 before you do?

16 THE COURT: Without prejudice.

17 MR. GREEN: In a letter dated January 24, 1974,
18 addressed to the doctor it has talk about the
19 subpoenas.

20 MR. O'GRADY: Read the whole letter.

21 THE COURT: The Court of Appeals says you don't
22 have a right anyway. It's only at the request of the
23 licensee and at the discretion of a subcommittee --

24 MR. GREEN: Wait a minute. Shouldn't it work
25 both ways?

MR. O'GRADY: May I submit to the Court a
complete copy of the papers.

1 THE COURT: You are asking me to say the law
2 is unconstitutional. If you want that you have to ask
3 for a three-judge court.

4 The application is dismissed without prejudice
5 to renew after final action by the state court.

6 Next case.

7 MR. GREEN: Could you direct him to give us
8 copies of this (indicating)?

9 MR. O'GRADY: May I submit the papers to the
10 Court that I planned to submit?

11 THE COURT: Yes. Give him copies of everything.

12 MR. O'GRADY: He already has most of them.

13 THE COURT: You don't serve papers that say you
14 are attaching Exhibits A, B, C and then do not attach
15 them.

16 MR. O'GRADY: This is a voluminous record.

17 THE COURT: Why don't you find out what you
18 need, Mr. Green? Why make him Xerox all of that?

19 MR. O'GRADY: I will be happy to give Mr. Green
20 what I have.

21 MR. GREEN: I want the papers that he states are
22 attached and one of them is of great importance, it is
23 the report. I know nothing about the report of
24 March 10th until I saw the papers this morning.

25 MR. O'GRADY: May I submit to the Court a
complete copy of the papers.

ORDER OF DISMISSAL OF JOHN R. BARTELS, U.S.D.J. FILED 61a
MARCH 21, 1975 DISMISSING THE ACTION WITHOUT PREJUDICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

MAR 21 1975

TIME A.M.
P.M.

DOCKET NO. 75C247

FILED

ORDER OF DISMISSAL

LESTER
-VS-
GRIFFITH

The parties having appeared before this Court and adequate
cause being shown:

IT is, on this 21st day of MARCH 1975

ORDERED, that this action be and it hereby is dismissed,
without costs, and without prejudice.

John R. Bartels
UNITED STATES DISTRICT JUDGE

AT BROOKLYN, N.Y.

DATED: MARCH 21, 1975

NOTICE OF APPEAL FILED APRIL 7, 1975

62a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, N.Y. 11201

ELIAS LESTER, M.D. -----PETITIONER
310 KEAP ST. PRO SE
BROOKLYN, N.Y. 11211

VS.

EMLYN I. GRIFFITH -----RESPONDENT
REGENTS COMMITTEE ON DISCIPLINE
261 MADISON AVE. (15th. floor)
NEW YORK, N.Y. 10016

INDEX NO: 75 C 247

*Notice of
Appeal*

S I R S:

PLEASE TAKE NOTICE, that ELIAS LESTER, M.D. Petitioner hereby appeals from an order of Judge John R. Bartels dismissing Petitioner's Motion without prejudice on March 21, 1975 and entered in the Office of the Clerk of the U.S. District Court Eastern District of New York on March 21, 1975, as well as from eachand every part of said order as well as the whole thereof.

Dated: Brooklyn, New York

April 7, 1975

Elias Lester, M.D. Pro Se
310 Keap St.
Brooklyn, N.Y. 11211
Tele: 212-388-3403.

63:

To: Louis J. LEFKOWITZ
ATT. GENERAL
CAPITOL N.Y. 12224.
ALBANY.

To: Louis J. LEFKOWITZ
ATT. GENERAL.
261 MADISON AVE.
NEW YORK. N.Y. 10016.

REPORT OF FINDINGS, DETERMINATION AND RECOMMENDATION
TO THE REGENTS SUB-COMMITTEE ON DISCIPLINE, MARKED
EXHIBIT 1

NEW YORK STATE
EDUCATION DEPARTMENT
STATE BOARD FOR MEDICINE
COMMITTEE ON PROFESSIONAL CONDUCT

R E P O R T

of .

FINDINGS,
DETERMINATION,
and
RECOMMENDATION

In the Matter of the Application for the
Revocation of the Authorization and License
heretofore granted to

ELIAS LESTER

to practice as a physician
in the State of New York, and for the
cancellation of his ~~her~~ registration as
such, and for such other relief as the
premises warrant.

TO THE REGENTS SUB-COMMITTEE ON DISCIPLINE

The undersigned, Hearing Panel of the Committee on
Professional Conduct of the State Board for Medicine
duly designated to hear the charges against ELIAS LESTER
hereinafter referred to as respondent, pursuant to Section 6510
of the Education Law of the State of New York, and to report its
findings, determination and recommendation in respect to the
said charges, do hereby, after due deliberation, unanimously re-
port its findings, determination and recommendation as provided
by law, as follows:

RECORD OF PROCEEDINGS

Petition containing charges verified: December 12, 1973

Notice of hearing upon charges returnable: February 15, 1974

Place of Hearing: 261 Madison Avenue
New York, N.Y.

Respondent served with copy of notice of hearing and charges: December 20, 1973 by registered mail.

Answer of respondent verified: January 3, 1974
filed: January 7, 1974

Petitioner appears by LOUIS J. LEFKOWITZ, Attorney General,

State of New York

By: JOHN J. O'GRADY
Assistant Attorney General

~~Respondent appears~~ Hearings held in Absentia
~~XXXXXXXXXXXXXXXXXXXX~~

Respondent's present address: 310 Keap Street, Brooklyn, N.Y.
195 Lee Avenue, Brooklyn, N.Y.
361 Broadway, Brooklyn, N.Y.

Hearing(s) held on: February 15, 1974; July 26, 1974

EXHIBIT

FINDINGS, DETERMINATION AND
RECOMMENDATION OF HEARING PANEL

1. ELIAS LESTER, the respondent herein was authorized to engage in the practice of medicine in the State of New York by the issuance to him of licenses Nos. 89535, (89535-3, 89535-4) by the New York State Education Department on September 10, 1962.
2. The respondent is currently registered to practice medicine from addresses at 195 Lee Avenue, Brooklyn, New York; 261 Broadway, Brooklyn, New York; and 188 Lee Avenue Brooklyn, New York.
3. The respondent was charged in these proceedings with practicing the profession of medicine while his ability to practice is impaired by mental disability. It was alleged that on November 20, 1972, respondent, in the Criminal Court of Record in and for Dade County, Florida was found not guilty of the offense of Bribery by reason of Insanity by the Court sitting without a jury. In arriving at its

decision, the Court relied upon an examination of the respondent by a court appointed psychiatric staff which found that the respondent suffered from an acute psychosis of a paranoid type.

The charges in this matter were served upon respondent by mail at the addresses set forth above from which he was registered.

There is in evidence a group of documents in the nature of an answer to the charges and a request for subpoenas which were received from the respondent by mail from a location in Israel. In the first paragraph of the answer (Petitioner's Exhibit 3A), respondent acknowledges that the charges were received by him on January 1, 1974 in Tel Aviv, Israel, forwarded by his office at 195 Lee Avenue, Brooklyn, New York.

There is also in evidence correspondence between the Attorney General's Office and the respondent concerning his request for subpoena

At the first date of hearing which was held on February 15, 1974, the committee received several documents, letters and a telegram which were placed in evidence and adjourned the hearing with a strong suggestion to the respondent that he take steps to be present in person at the next scheduled hearing and that he obtain counsel to represent him in this very serious matter.

The hearing was continued on July 26, 1974 at which time the respondent did not appear but submitted a group of documents by his brother and an employee who appeared in person. There was received in evidence some additional correspondence and a telegram from the respondent.

In addition there is before us a certified copy of a Judgment of Acquittal dated November 20, 1972 (Petitioner's Exhibit 8) in the matter of the State of Florida against the respondent, Elias Lester stating that he was found not guilty by reason of insanity by the Court sitting without a jury of the offense of bribery. There is also in evidence before us copy of the information on which the criminal matter was instituted in Florida and a copy of an Order by the Court appointing certain experts for the purpose of examining the respondent as to his mental condition (Petitioner's Exhibit 9 and 10).

As Petitioner's Exhibit 11 there is before us, official documents addressed to the Florida Court from one Alan Rutchik, Ph.D. Clinical Psychologist, William Corwin, M.D., and Norman Reichenberg, Ph.D. setting forth their findings as to the mental condition of the respondent. As Petitioner's Exhibit 12, there is a group of documents submitted by the respondent in the nature of Exhibits and explanations which were received by the committee and considered.

At the continued hearing, a representative of the respondent requested additional time to submit documents and records which were stated to be en route to the hearing from the respondent. We granted such permission and received a package of additional documents and long playing phonograph records which we made part of the record and which we considered in arriving at our determination herein.

Based upon all of the documents, exhibits and testimony before the committee, we made the following findings of fact:

The respondent herein was duly served with the charges and in view of his answer referring to the charges, we are satisfied that he has actually received and perused them.

We find that respondent was charged in an information in the courts of the State of Florida with corruptly giving, offering or promising money to a public officer for the purpose of influencing his official conduct. We further note and find that respondent was found not guilty of that charge by reason of insanity. We accept the reports of the persons assigned to examine the respondent upon which the Court's finding is based. We therefore, find that on October 23, 1972, the date of the report of Allen I. Rutchik, Ph.D. the respondent was engaging in an:

"enormous struggle to maintain himself on the good side of reality. This struggle, while constant, is not always successful. He can slip into psychosis on occasion, but so far has had the resiliency to recover adequately. In addition, his great need to maintain his emotional balance robs him of his spontaneity and leaves him an inhibited, emotionally withdrawn man who is very uncomfortable in interpersonal relationships. His primary stance toward the world is one of suspiciousness; he is concerned about harm from the outside. He is quick to assign blame to others and to abdicate responsibility for his own actions. The psychological evidence suggests that Dr. Lester slips periodically into unreality, and his suspiciousness then becomes exacerbated to a point where he becomes clinically paranoid."

We further find that on October 24, 1972 as set forth in the report of William Corwin, M.D. P.A., the respondent was suffering from "an acute psychosis of a paranoid type." Although he was less disturbed at that time, there was a "continuing paranoid element to his thinking."

Petitioner's Exhibit 3A, an answer of the respondent dated January 3, 1974 which is signed and verified by him disclosed that said document was prepared and written by one not in touch with reality, suffering delusions, impaired judgment and impaired insight.

We have considered Petitioner's Exhibit 12, a document submitted under the copyright of Elias Lester, 1974 which purports to be a letter to the Hon. Senator Weicker by Elias Lester, M.D. consisting

of approximately one hundred and ten pages reproducing some of the previous exhibits in this matter and part of the transcript. The document itself discloses that the author thereof is not in touch with reality, and not competent to remain in the practice of medicine.

As for Petitioner's Exhibit 13, a document received from the respondent dated May 1, 1974 we make the same observations as to the mentality and competence of the author, the respondent. We have also considered a group of documents and long playing records prepared by respondent, which were submitted by respondent's agents after the last date of hearing. We kept the hearing open specifically for the purpose of receiving same. The documents and records contain the same type of material as contained in the respondent's other documents and show that the author thereof is not in touch with reality, the contents of the documents are disjointed and indicative of a disturbed personality.

Upon all of the evidence, we find and conclude that the respondent is guilty of practicing the profession of medicine while his ability to practice is impaired by a mental disability. In October 1972, when examined by order of the Florida Court, by William Corwin, M.D., a psychiatrist, he was suffering from an acute psychosis of a paranoid type which was somewhat remitted at that time. Based upon the entire record, including the documents submitted to us by the respondent, we find that he is still suffering from an acute psychosis of a paranoid type and he is so far removed from reality at the present time that he is unfit for the practice of medicine and he is a danger to the public in his present condition.

Accordingly, we recommend to the Board of Regents that the license and registration heretofore issued to the respondent, authorizing him to engage in the practice of medicine in the State of New York be revoked and cancelled of record.

CONCLUSION

We find and conclude that the respondent is guilty as charged of practicing the profession of medicine while his ability to practice is impaired by mental disability. We recommend to the Board of Regents that the respondent's license and registration be revoked.

Dated: New York, New York
December 13, 1974

69a

MAX L. KAMEN, D.O.

HENRY B. MARSHALL, M.D.

HERMAN B. SNOW, M.D.

PHILIP F. FLEISHER, D.O.

THOMAS J. SINATRA, M.D.


MAX L. KAMEN, D.O., CHAIRMAN

DEPARTMENT OF EDUCATION
STATE OF NEW YORK
STATE BOARD FOR MEDICINE

-----x

In the Matter of the Application for the
Revocation of the Authorization and License
heretofore granted to

ELIAS LESTER

to practice as a physician
in the State of New York, and for the
cancellation of his/~~her~~ registration as
such, and for such other relief as the
premises warrant.

-----x

CERTIFICATE

O F

EXECUTIVE SECRETARY
AND PROFESSIONAL
CONDUCT OFFICER

TO THE BOARD OF REGENTS:

I, the undersigned, Executive Secretary of Professional Conduct
and Professional Conduct Officer, duly appointed pursuant to the
Education Law of the State of New York, do hereby certify:

1. That charges, in writing, were duly preferred and filed
against ELIAS LESTER , a duly licensed physician
of the State of New York, hereinafter referred to as the respondent,
wherein respondent was charged with practicing the profession of
medicine while his ability to practice is impaired by mental
disability
within the purview and meaning of Section 6509, subd. 3 of the
Education Law, and a copy of said charges with notice of hearing were
duly served upon the respondent and a hearing duly had thereon before
a Hearing Panel of the Committee on Professional Conduct of the State
Board for Medicine composed of
Drs. Kamen, Marshall, Snow, Fleisher, and Sinatra
and its written report of Findings, Determination and Recommendation,
together with a transcript of the hearing were duly transmitted to me.

2. That, after due deliberation, said report of Findings, Determination and Recommendation was duly made by the five members of the Hearing Panel by unanimous vote, after a duly constituted hearing on the ^{15th day of February, 1974 and} 26th day of July, 1974 ~~1974~~, wherein it was determined that the respondent is guilty of the charges, and wherein it was recommended that for respondent's professional misconduct, his license be revoked.

STATE EDUCATION DEPARTMENT JANUARY 3, 1975 LETTER RECOMMENDING 72a
REVOCATION OF DR. LESTER'S LICENSE MARKED EXHIBIT II

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
261 MADISON AVENUE
NEW YORK, NEW YORK 10016

DIVISION OF PROFESSIONAL CONDUCT
8121 647-2518

CERTIFIED MAIL - RRR

January 3, 1975

Elias Lester
310 Keap Street
Brooklyn, New York

Re: ELIAS LESTER

Dear Mr. Lester:

Enclosed please find a copy of the report of the findings, determination and recommendation of the Hearing Panel which recommended the following:

RECOMMENDATION: That respondent is guilty as charged and that respondent's license and registration be revoked.

The Regents Committee on Discipline will review this matter and thereafter submit a written report of its review to the Board of Regents. The Regents Committee on Discipline will meet as follows:

DATE AND TIME: Wednesday, February 5, 1975 at 10 A.M.
PLACE: 261 Madison Avenue (15th floor)
New York, New York

The Regents Committee on Discipline may recommend the acceptance, modification or rejection of all or part of the findings, determination and recommendation of the Hearing Panel. Therefore, the respondent is required to appear and has the right to be represented by counsel at said meeting.

Should you desire to submit briefs, the original and ten copies must be sent to the undersigned on or before January 20, 1975.

It is important that you contact your attorney immediately and inform him of the foregoing.

Very truly yours,

THOMAS V. MILANA
ACTING DIRECTOR
By:

TVM:HWS: rc
cc:

HAROLD W. SUCKENIK
ATTORNEY

ELIAS LESTER, M.D. AFFIDAVIT TO THE BOARD OF REGENTS
SWORN TO JANUARY 30, 1975, MARKED EXHIBIT III

Elias Lester, M.D.
310 Keap St.
Brooklyn, N.Y. 11211

To: The Board of Regents
Regents Committee on Discipline
% John J. O'Grady (Ass. Att. General)
261 Madison Ave.
N.Y. N.Y. 10016

S I R S :

PLEASE TAKE NOTICE, that I Elias Lester respectfully request as of right to have a Court Reporter, and subpoenas issued to the below named individuals, to attend the hearing on February 5, 1975 at 10:00 A.M. (15th floor) 261 Madison Ave, N.Y. and to allow to cross-examine the said witnesses by myself, as of right pursuant the New York Education Law. § 6510 (4) that the licensee shall have the right to produce witnesses and evidence in his behalf, to cross-examine witnesses and examine evidence produced against him ---

Note that CPLR § 2302 clearly states that the Attorney General has the authority to issue such subpoenas, in the past the hearings were before the Attorney General and subpoenas were not issued, despite of their request.

The persons to be subpoenaed are my accusers, or the witnesses against me, to the best of my knowledge they hold no public positions, their names are:

- 1.- Isidore Weiner
- 2.- Max L. Kamen, L.O.
- 3.- Henry B. Marshall, M.D.
- 4.- Herman B. Snow, M.D.
- 5.- Philip F. Fleisher, D.O.
- 6.- Thomas J. Sinatra, M.D.

The addresses of all are:

The State Education Department
261 Madison Ave.
N.Y. N.Y. 10016

Sworn to before me

This January 30, 1975

Elias Lester, M.D.

Exhibit III

REPORT OF REGENTS COMMITTEE ON DISCIPLINE DATED
MARCH 10, 1975 MARKED EXHIBIT V



The University of the State of New York

IN THE MATTER

of the

Application for the revocation of the
authorization and license heretofore
granted to ELIAS LESTER to practice
as a physician in the State of New
York, for the cancellation of his
registration as such, and for such
other relief as the premises warrant.

No. 977

Report of the Regents Committee on Discipline

To the Board of Regents:

Your Committee on Discipline reports as follows:

ELIAS LESTER, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York on September 10, 1962 by the New York State Education Department. He was issued license Nos. 89535, 89535-3, 89535-4 and was registered with the Department from addresses at 195 Lee Avenue, Brooklyn, New York; 361 Broadway, Brooklyn, New York; and 188 Lee Avenue, Brooklyn, New York.

On December 20, 1973 the instant disciplinary proceeding was commenced by service of the notice of hearing, petition and charges upon the respondent, by registered mail:

The petition charged respondent, with professional misconduct within the purview and meaning of subdivision 3 of section 6509 of the Education Law of the State of New York, (practicing the profession while the ability to practice is impaired by mental disability), as follows:

- (a) On or about the 20th day of November, 1972, in the Criminal Court of Record in and for Dade County, Florida in Case No. 71-9143, entitled The State of Florida vs. Elias Lester, the respondent was found not guilty of the offense of Bribery by reason of Insanity by the Court sitting without a jury.
- (b) On or about November 2, 1971, one Richard E. Gerstein, State Attorney of the 11th Judicial Circuit of Florida, prosecuting for the State of Florida in the County of Dade, charged in information that the respondent, from November 1 through November 2, 1972, corruptly gave, offered or promised to a public officer, to wit, a building inspector, the sum of \$60.00 with the intent or purpose to influence the acts of said public officer on a matter then pending before him in his public capacity. As a result of said accusation of crime, the Criminal Court of Dade County, Florida, Alfonso C. Sepe, Judge, ordered respondent examined by a court appointed psychiatric staff including a psychiatrist, William Corwin, M.D., Allen I. Rutchik, PhD. and Norman Reichenberg, PhD. The result of said evaluation is contained in the report of the psychiatrists to the court, "I believe he (respondent) has suffered from an acute psychosis of a paranoid type. Although he is less disturbed at this time, there is a continuing paranoid element to his thinking. It is my opinion that he is presently capable of properly answering a charge against him and to aid in his own defense and to stand trial. It is also my opinion that at the time of the alleged offense with which he is charged, that he did not know right from wrong or the nature and consequence of his acts." Respondent has continued to practice medicine in this

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State while his ability to practice is impaired by his mental disability as set forth above, which continues to the present time.

Respondent submitted a written answer which is more fully set forth in the report of the Hearing Panel which heard this matter.

On February 15, 1974 and July 26, 1974 a hearing was held before a Hearing Panel of the Committee on Professional Conduct of the State Board for Medicine, at which respondent did not appear nor was he represented by an attorney. However, two persons, the brother of the respondent, who was an employee of the respondent, and another employee of the respondent, appeared on the first hearing date and two persons, the brother and a third employee of the respondent, appeared on the second hearing date.

The Hearing Panel rendered a report of its findings, determination and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as exhibit 'Calendar No. 977'.

The Hearing Panel found and determined that respondent was guilty as charged and recommended to the Board of Regents that respondent's license to practice medicine in the State of New York be revoked.

Respondent was afforded an opportunity to appear before us in person and to be represented by an attorney.

On February 5, 1975 respondent appeared before us in person, acknowledged that he had been advised of his right to

counsel, and indicated that he wished to represent himself. Respondent was permitted to have his wife and brother present with him. In addition thereto, in connection with the request of the respondent to have a hearing reporter present at our review of this matter, a hearing reporter, furnished by the Department, and two other hearing reporters, brought to our meeting by the respondent, were also present. Petitioner was represented by John J. O'Grady, Assistant Attorney General.

The request of the respondent to subpoena witnesses at our review of this matter was denied. In addition thereto, the motion of the respondent to dismiss the pending proceedings was denied and it was indicated to respondent that our Committee had proper jurisdiction and that the prior procedure as well as our procedure was proper and consistent with the Education Law.

We have carefully reviewed and considered the entire record, the papers submitted to us by respondent, the statements made before us, and the paper with an attached affidavit of the respondent submitted by him subsequent to our February 5, 1975 meeting.

We unanimously recommend that the Board of Regents accept the findings and determination of the Hearing Panel of the Committee on Professional Conduct of the State Board for Medicine that respondent is guilty of the charges.

With respect to the measure of discipline to be imposed, we unanimously recommend that, under all of the circumstances herein, the Board of Regents modify the recommendation of the

Hearing Panel to the extent that respondent's license to practice as a physician in the State of New York be suspended upon the charges of which respondent was found guilty with leave to respondent to apply to the Regents Committee on Discipline for the termination of said suspension.

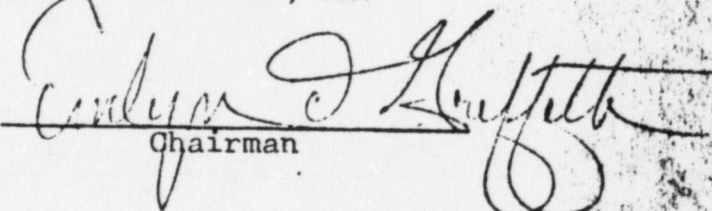
Upon any application by the respondent for the termination of the suspension of his license, respondent must submit written opinions from at least two independent psychiatrists, approved by the Department prior to any examination of the respondent by said psychiatrists, that respondent is fit to practice as a physician in the State of New York. The Regents Committee on Discipline reviewing said application may thereafter make whatever recommendation it may deem just and proper to the Board of Regents.

Respectfully submitted,

EMLYN I. GRIFFITH

DANIEL GUTMAN

GEORGE A. SPOHR, JR.


Chairman

March 10, 1975

COMMISSIONER OF EDUCATION ORDER DATED APRIL 7, 1975
SUSPENDING DR. LESTER'S LICENSE MARKED EXHIBIT VI



The University of the State of New York

IN THE MATTER

of the

Applica ion for the revocation of the
authorization and license heretofore
granted to ELIAS LESTER to practice
as a physician in the State of New York,
for the cancellation of his registration
as such, and for such other relief as the
premises warrant.

No.977

Pursuant to the report of the Regents Committee on Discipline,
dated March 10, 1975, and to the vote of the Board of Regents on
March 21, 1975, which report and vote are incorporated herein and
made a part hereof, it is

ORDERED, that the findings and determination of guilt rendered
by the Hearing Panel of the Committee on Professional Conduct of the
State Board for Medicine in the matter of ELIAS LESTER, respondent,
are accepted; that respondent is guilty of the charges; and that re-
spondent's license to practice as a physician in the State of

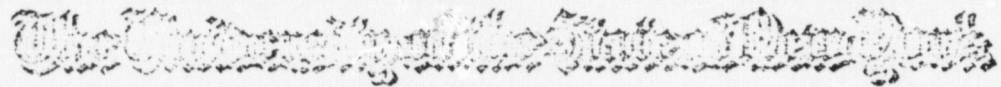
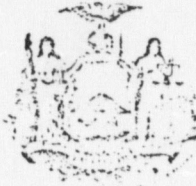
81a

New York as well as his registration or registrations to so practice, wherever they may appear, are suspended upon the charges of which respondent was found guilty, with leave to respondent to apply to terminate said suspension in accordance with the procedure set forth in the report of the Regents Committee on Discipline.

IN WITNESS WHEREOF, I, Ewald B. Nyquist,
Commissioner of Education of the State
of New York, for and on behalf of the
State Education Department and the
Board of Regents, do hereunto set my
hand and affix the seal of the State
Education Department, at the City of
Albany, this 7th day of April, 1975.



Ewald B. Nyquist
Commissioner of Education



IN THE MATTER

of the

Application for the revocation of the authorization and license heretofore granted to ELIAS LESTER to practice as a physician in the State of New York, for the cancellation of his registration as such, and for such other relief as the premises warrant.

No. 977

Report of the Regents Committee on Discipline

To the Board of Regents:

Your Committee on Discipline reports as follows:

ELIAS LESTER, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York on September 10, 1962 by the New York State Education Department. He was issued license Nos. 89535, 89535-3, 89535-4 and was registered with the Department from addresses at 195 Lee Avenue, Brooklyn, New York; 361 Broadway, Brooklyn, New York; and 188 Lee Avenue, Brooklyn, New York.

On December 20, 1973 the instant disciplinary proceeding was commenced by service of the notice of hearing, petition and charges upon the respondent, by registered mail.

The petition charged respondent, with professional misconduct within the purview and meaning of subdivision 3 of section 6509 of the Education Law of the State of New York, (practicing the profession while the ability to practice is impaired by mental disability), as follows:

- (a) On or about the 20th day of November, 1972, in the Criminal Court of Record in and for Dade County, Florida in Case No. 71-9143, entitled The State of Florida vs. Elias Lester, the respondent was found not guilty of the offense of Bribery by reason of Insanity by the Court sitting without a jury.
- (b) On or about November 2, 1971, one Richard E. Gerstein, State Attorney of the 11th Judicial Circuit of Florida, prosecuting for the State of Florida in the County of Dade, charged in an information that the respondent, from November 1 through November 2, 1972, corruptly gave, offered or promised to a public officer, to wit, a building inspector, the sum of \$60.00 with the intent or purpose to influence the acts of said public officer on a matter then pending before him in his public capacity. As a result of said accusation of crime, the Criminal Court of Dade County, Florida, Alfonso C. Sepe, Judge, ordered respondent examined by a court appointed psychiatric staff including a psychiatrist. William Corwin, M.D., Allen I. Rutchik, PhD. and Norman Reichenberg, PhD. The result of said evaluation is contained in the report of the psychiatrists to the court, "I believe he (respondent) has suffered from an acute psychosis of a paranoid type. Although he is less disturbed at this time, there is a continuing paranoid element to his thinking. It is my opinion that he is presently capable of properly answering a charge against him and to aid in his own defense and to stand trial. It is also my opinion that at the time of the alleged offense with which he is charged, that he did not know right from wrong or the nature

and consequence of his acts." Respondent has continued to practice medicine in this State while his ability to practice is impaired by his mental disability as set forth above, which continues to the present time.

Respondent submitted a written answer which is more fully set forth in the report of the Hearing Panel which heard this matter.

On February 15, 1974 and July 26, 1974 a hearing was held before a Hearing Panel of the Committee on Professional Conduct of the State Board for Medicine, at which respondent did not appear nor was he represented by an attorney. However, two persons, the brother of the respondent, who was an employee of the respondent, and another employee of the respondent, appeared on the first hearing date and two persons, the brother and a third employee of the respondent, appeared on the second hearing date.

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The Hearing Panel found and determined that respondent was guilty as charged and recommended to the Board of Regents that respondent's license to practice medicine in the State of New York be revoked.

Respondent was afforded an opportunity to appear before us in person and to be represented by an attorney.

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The request of the respondent to subpoena witnesses at our review of this matter was denied. In addition thereto, the motion of the respondent to dismiss the pending proceedings was denied and it was indicated to respondent that our Committee had proper jurisdiction and that the prior procedure as well as our procedure was proper and consistent with the Education Law.

We have carefully reviewed and considered the entire record, the papers submitted to us by respondent, the statements made before us, and the paper with an attached affidavit of the respondent submitted by him subsequent to our February 5, 1975 meeting.

We unanimously recommend that the Board of Regents accept the findings and determination of the Hearing Panel of the Committee on Professional Conduct of the State Board for Medicine that respondent is guilty of the charges.

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Hearing Panel to the extent that respondent's license to practice as a physician in the State of New York be suspended upon the charges of which respondent was found guilty with leave to respondent to apply to the Regents Committee on Discipline for the termination of said suspension.

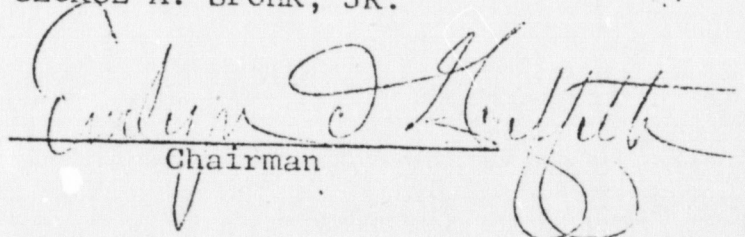
Upon any application by the respondent for the termination of the suspension of his license, respondent must submit written opinions from at least two independent psychiatrists, approved by the Department prior to any examination of the respondent by said psychiatrists, that respondent is fit to practice as a physician in the State of New York. The Regents Committee on Discipline reviewing said application may thereafter make whatever recommendation it may deem just and proper to the Board of Regents.

Respectfully submitted,

EMLYN I. GRIFFITH

DANIEL GUTMAN

GEORGE A. SPOHR, JR.


Chairman

March 10, 1975

UNITED STATES COURT OF APPEALS
for the Second Circuit

ELIAS LESTER, M.D.,
Petitioner-Appellant,

- against -

EMLYN I. GRIFFITH,
Respondent-Respondent.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York

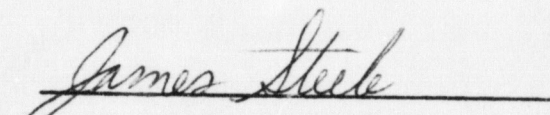
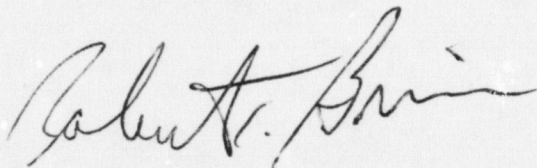
ss.:

I, James Steele, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th, Street, New York, New York
That on the 19th day of June 1975 at 261 Madison Ave, N.Y. N.Y.

deponent served the annexed *Appendix* upon
Louis J. Lefkowitz

the Attorney in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 19th
day of June 19 75


JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977



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